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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, ET Docket Nos. 19-138 and 13-49, GN Docket No. 18-357

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Federal Communications Commission's ("FCC" or "Commission") rules, 47 C.F.R. § 1.1206, the Association of Global Automakers, Inc. ("Global Automakers"), by its attorneys, hereby submits this letter summarizing an *ex parte* meeting in the above-referenced dockets regarding the 5.850-5.925 GHz band ("5.9 GHz band").

On Tuesday, November 26, 2019, Global Automakers' Steve Gehring and Paul Scullion and Scott Delacourt of Wiley Rein LLP met with Julie Knapp, Aspa Paroutsas, Jamison Prime, Howard Griboff, Paul Murray, Syed Hasan, and Pat Forster (on the phone) of the FCC's Office of Engineering and Technology.

Global Automakers raised concerns regarding the draft Notice of Proposed Rulemaking[1] ("NPRM") relating to the omission of significant information provided in the record and bearing on the proposal under consideration. As Global Automakers explained, the Commission has an obligation under the Administrative Procedure Act to properly consider the record before it when it engages in rulemaking activities. "Normally, an agency rule would be arbitrary and capricious if the agency has. . . entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency[.]" *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Ins. Co.*, 103 S. Ct. 2856, 2867 (1983). Furthermore, the FCC is obligated to "respond to all significant comments, for the opportunity to comment is meaningless unless the agency responds to significant points raised by the public." *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 561 (2009) quoting *ACLU v. FCC*, 823 F.3d 1554, 1581 (D.C. Cir. 1987). The Commission has amassed a significant record on issues related to

[1] *In re Use of the 5.850-5.925 GHz Band*, Notice of Proposed Rulemaking, FCC-CIRC1912-YY, ET Docket No. 19-138 (Nov. 21, 2019) ("Draft NPRM").

the 5.9 GHz band through a number of public notices.[2] Indeed, the Commission borrowed heavily from that record in developing the proposal set forth in the draft NPRM. Nevertheless, the NPRM ignores significant evidence in the record pertaining to vehicle-to-everything ("V2X") services and the relationship between those services and automotive safety—an "important aspect of the problem" that bears serious consideration in this proceeding.

Global Automakers urged the FCC to revise the draft NPRM to better reflect the record before the agency on key issues under consideration in this proceeding. Specifically, the NPRM is not representative of the record before the Commission because: (1) it does not acknowledge the auto safety crisis; (2) it fails to acknowledge the life-saving potential of V2X services generally and dedicated short-range communications ("DSRC") specifically; (3) it overlooks the importance of the basic safety message to the V2X ecosystem; and (4) it fails to acknowledge the record regarding use of all 7 channels for V2X.

Global submits that the draft NPRM should be revised prior to being voted at the December agenda meeting to reflect the record materials detailed below in these four key areas:

(1) The NPRM does not acknowledge the auto safety crisis.

- "According to the Centers for Disease Control and Prevention (CDC), about 90 people die each day in the United States from crashes, resulting in the highest death rate among comparison countries. If U.S. crash deaths equaled the average rate of 19 other high-income countries, more than 18,000 lives could be saved each year. Now is the time for the Commission to act decisively to protect the investment in dedicated V2X short-range communications at 5.9 GHz as the technology is being deployed en-masse." Comments of ITS America on Phase I Testing, Docket No. 13-49, at 3 (filed Nov. 28, 2018),

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[2] *See Office of Engineering and Technology and Wireless Telecommunications Bureau Seek Comment on 5GAA Petition for Waiver to Allow Deployment of Cellular Vehicle-To-Everything (C-V2x); Technology in the 5.9 GHz Band,* Public Notice, GN Docket No. 18-357 (Dec. 6, 2018) ("5GAA PN"); *Office of Engineering and Technology Requests Comments on Phase I Testing of Prototype U-NII-4 Devices*, Public Notice, ET Docket No. 13-49, DA 18-1111 (Oct. 29, 2018) ("Phase I Testing PN"); *Commission Seeks to Update and Refresh the Record in the "Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band" Proceeding*, Public Notice, 31 FCC Rcd 6130 (2016) ("Refresh PN").

https://ecfsapi.fcc.gov/file/112874632003/ITSA%20Comments%20to%20Phase%20I%20U-NII-4%20DSRC%20Spectrum%20Sharing%20Testing%20Report.pdf.

- "According to the National Highway Traffic Safety Administration (NHTSA), in 2017, 37,133 people died in motor vehicle crashes. That equates to over 100 people a day dying on American roads, and these deaths are preventable. One way to make large, sustained gains in reducing roadway deaths and injuries is through technology, and therefore, we urge you to preserve the 5.9 GHz band for transportation safety." Ex Parte Letter from Safety Groups, ET Docket No. 13-49, GN Docket No. 18-357, at 1 (filed Oct. 28, 2019), https://ecfsapi.fcc.gov/file/10281339114956/Safety%20Groups%20Letter%20to%20FCC%20on%205.9%20GHz%20Band.pdf.

- "As you may know, overall traffic deaths in the United States have increased over the past two years. In 2016, there were 37,461 traffic deaths in the United States. An increase of 5.6 percent over 2015. Traffic deaths remain one of the biggest causes of death in the United States and MADD believes that while strong law enforcement efforts and good laws are critical to stopping drunk driving crashes, new technologies can play a significant role in reducing traffic deaths." Ex Parte Letter from Mothers Against Drunk Driving, ET Docket No. 13-49, at 1 (dated June 21, 2018), https://ecfsapi.fcc.gov/file/10709354615087/DSRC%20FCC%20Letter.pdf.

- "With hundreds of Americans losing their lives every day on our nation's roads, the need for ITS is greater than ever before." Ex Parte Letter of 5GAA, ET Docket No. 13-49, GN Docket No. 18-357, at 2 (filed Apr. 3, 2019) (citing National Safety Council, Vehicle Deaths Estimated at 40,000 for Third Straight Year, https://www.nsc.org/road-safety/safety-topics/fatality-estimates (last visited Apr. 1, 2019) ("For the first time since the Great Recession, the U.S. has experienced three straight years of at least 40,000 roadway deaths, according to preliminary estimates released Feb. 13[, 2019] by the National Safety Council.").), https://ecfsapi.fcc.gov/file/104030451515194/5GAA%20Band%20Plan%20Ex%20Parte%20-%20FINAL.pdf.

(2) The NPRM does not acknowledge the life-saving potential of V2X services.

- "Researchers at the University of Michigan recently completed a study which quantified the costs of delaying deployment of safety-critical applications. Specifically, they evaluated the cumulative number of lives which will be lost if we wait even three or five years for a new technology (C-V2X) to be developed and proven. The study states that, 'Up to 8.1 million car crashes and 44,000 deaths could be prevented if the federal government mandated connected vehicle technology now, rather than waiting even three years to develop and evaluate competing technologies.' The conclusion is that tens of thousands of lives can be saved by deploying DSRC now, instead of waiting." Ex Parte Letter of Michigan Department of Transportation, ET Docket No. 13-49, at 2 (filed May 24, 2018), https://ecfsapi.fcc.gov/file/106150197828588/1806122-3.pdf.

- "The NHTSA V2V NPRM discusses four safety applications – Forward Collision Warning, Intersection Movement Assist, Left Turn Assist, and Lane Change Warning – that could eliminate 89% of Light Vehicle to Light Vehicle crashes and 85% of their associated economic costs." Ex Parte Letter of the Association of Global Automakers, ET Docket No. 13-49, Attachment Responding to Staff Questions, at 1 (filed June 28, 2017) (citing Federal Motor Vehicle Safety Standards; V2V Communications, 82 Fed. Reg. 3854, 3863 (proposed Jan. 12, 2017)), https://ecfsapi.fcc.gov/file/106280338707615/6-28-17%20Association%20of%20Global%20Automakers%20Ex%20Parte.pdf.

(3) The NPRM does not acknowledge the importance of the basic safety message.

- "V2X technology is based around the ability to transmit and receive the basic safety message, which gives key data about a moving vehicle such as its size, position, speed, and heading. The SAE channel plan designates Channel 172, located at 5.855-5.865 GHz, for the BSM for DSRC services. The 5GAA Petition, by contrast, seeks authority to operate only in the top 20 MHz of the band (5.905-5.925 GHz), which means that the two technologies would use different BSMs. Because interoperability is essential to achieve the safety benefits of V2X, the

Commission must ensure that policy supports continued innovation and interoperability solutions." Comments of Global Automakers on 5GAA Waiver Petition, GN Docket No. 18-357, at 5 (filed Feb. 7, 2019), https://ecfsapi.fcc.gov/file/10207284951848/Comments%20of%20Global%20Automakers.pdf.

- "Central to successful V2X services is the ability for vehicles to transmit and receive the Basic Safety Message (BSM), which consists of data about a vehicle in transit that enables other vehicles on the road to avoid collisions. . . . [T]he Commission must ensure that policy supports an interoperable solution to permit V2Xequipped vehicles to exchange necessary safety data with other V2X-equipped vehicles." Comments of the Safety Spectrum Coalition on 5GAA Waiver Petition, GN Docket No. 18-357, at 2 (filed Feb. 8, 2019), https://ecfsapi.fcc.gov/file/10208872511310/Comments%20of%20the%20Safety%20Spectrum%20Coalition.pdf.

- "V2X technology is built around the ability to transmit and receive the Basic Safety Message ("BSM"), which provides key information about moving vehicles including size, position, speed, and heading. Technologies that are unable to share this message with other connected vehicles deploying different technologies will not be able to achieve the primary safety benefits of V2X services." Ex Parte Letter of Global Automakers, ET Docket No. 13-49, GN Docket No. 18-357, at 4 (filed May 17, 2019), https://ecfsapi.fcc.gov/file/10517130513743/Global%20Automakers%20Ex%20Parte.pdf.

(4) The NPRM fails to acknowledge the record regarding use of all 7 channels for V2X.

- "The DSRC-based ITS services ecosystem is much more than just a single Basic Safety Message in support of V2V safety. [A]ll channels in the 5.9 GHz band are needed to support a much broader set of safety services. As discussed in previous filings, the DSRC application channel usage plan has been structured, based on industry consensus, to support an extensive set of safety needs and is currently being finalized at the Society of Automotive Engineers ("SAE") as follows: CH 172: [p]rimarily V2V safety; CH 174: [p]rimarily V2I safety and mobility; CH 176: [p]rimarily V2P and security information, such as certificate

revocation list ("CRL") distribution and update; CH 178: [c]ontrol channel; CH 180: [p]rimarily V2V safety, such as cooperative adaptive cruise control ("CACC") and platooning; CH 182: [p]rimarily V2I safety, such as work zone speed and road condition advisories; [and] CH 184: [p]rimarily for high-power, longer-distance public safety." Ex Parte Letter of Global Automakers, ET Docket No. 13-49, Attachment Responding to Staff Questions, at 1 (filed June 28, 2017), https://ecfsapi.fcc.gov/file/106280338707615/6-28-17%20Association%20of%20Global%20Automakers%20Ex%20Parte.pdf.

- "[T]here are safety-critical applications in development for all channels of the DSRC band. While V2V communications are a huge leap forward in safety, other applications, like commercial truck platooning, vehicle-to-infrastructure, vehicle-to-pedestrian communications, and DSRC support for automated driving are also critical to roadway safety." Ex Parte Letter of Global Automakers, ET Docket No. 13-49, at 6 (filed Mar. 13, 2017), https://ecfsapi.fcc.gov/file/10313121504216/Global%20Auto%20Ex%20Parte%203-13-17.pdf.

- "The parties discussed Global Automakers' vision for the 5.9 GHz safety spectrum and for the [DSRC] service. . . . Global Automakers explained the diversity of the 5.9 GHz safety application ecosystem and the need to preserve the existing 75 MHz allocation to leverage the full opportunity for existing and future safety benefits, emphasizing that all existing and planned applications are low-latency safety applications." Ex Parte Letter of Global Automakers, ET Docket 13-49, at 1-2 (filed Mar. 8, 2017), https://ecfsapi.fcc.gov/file/10308332125495/Global%20Autos%20Notice%20of%20Ex%20Parte%203-8-17.pdf.

Global Automakers respectfully requests that the draft NPRM be revised to reflect the record submissions detailed above on issues relevant to the NPRM proposals.

Please direct any questions to the undersigned.

Respectfully Submitted,
/s/ Scott Delacourt

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Counsel to Global Automakers